[Cite as *State v. Locke*, 2024-Ohio-1029.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff - Appellee	:	Hon. W. Scott Gwin, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
NICHOLAS LOCKE,	:	Case Nos. CT2023-0047
	:	CT2023-0048
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Cour of Common Pleas, Case Nos. CR2023-0072 and CR2023-0171
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	March 14, 2024

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
RONALD L. WELCH Prosecuting Attorney Muskingum County, Ohio	CHRIS BRIGDON 8138 Somerset Road Thornville, Ohio 43076
By: JOHN CONNOR DEVER Assistant Prosecuting Attorney Muskingum County, Ohio 27 North Fifth St., P.O. Box 189 Zanesville, Ohio 43702	

Baldwin, J.

{¶1} The appellant, Nicholas Locke, appeals his sentence imposed after he entered a plea of guilty. The appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On May 18, 2023, the appellant entered a plea of guilty to Aggravated Possession of Drugs in violation of R.C. §2925.11(A) and R.C. §2925.11(C)(1)(a), Possession of a Fentanyl-Related Compound in violation of R.C. §2925.11(A) and R.C. 2925.11(C)(11)(a), Possessing Drug Abuse Instruments in violation of R.C. §2925.12(A) and R.C. §2925.12(C), and Illegal Use or Possession of Drug Paraphernalia R.C. §2925.14(C)(1) and R.C. §2925.14(F)(1) in trial court case CR2023-0072. The appellant also entered a plea of guilty in trial court case CR2023-0171 to Grand Theft of a Motor Vehicle in violation of R.C. §2913.02(A)(1) and R.C. §2913.02(B)(5), Receipt of Stolen Property in violation of R.C. §2913.51(A), and Improperly Handling Firearms in a Motor Vehicle in violation of R.C. §2923.16(C).

{¶3} At the change of plea hearing, the trial court informed the appellant of each count's respective maximum sentence and fines, discussed the possibility of post-release control time, and confirmed that the appellant understood the charges against him, possible defenses, and his waiver of constitutional rights.

{¶4} At the sentencing hearing on June 20, 2023, the prosecutor informed the trial court that the appellant testified for the State in another matter. The State did not recommend prison, however; the State also refrained from joining a joint recommendation for community control. The appellant argued that he desires to get his life together, has shown genuine remorse for his actions, and has been accepted at Cedar Ridge Recovery.

The appellant apologized to the vehicle owner and asked the trial court to consider treatment as a sentence.

{¶5} The trial court noted that the appellant had a terrible record of showing up to court and had thirteen prior misdemeanors. The trial court then sentenced the appellant on case CR2023-0072 to eleven months in prison for Aggravated Possession of Drugs in violation of R.C. §2925.11(A) and R.C. §2925.11(C)(1)(a), eleven months in prison for Possession of a Fentanyl-Related Compound in violation of R.C. §2925.11(A) and R.C. 2925.11(C)(11)(a), ninety-days in jail for Possessing Drug Abuse Instruments in violation of R.C. §2925.12(A) and R.C. §2925.12(C), and thirty days in jail for Illegal Use or Possession of Drug Paraphernalia R.C. §2925.14(C)(1) and R.C. §2925.14(F)(1). For case CR2023-0171, the trial court sentenced the appellant to twelve months in prison for Grand Theft of a Motor Vehicle in violation of R.C. §2913.02(A)(1) and R.C. §2913.02(B)(5) and thirty days in jail for Improperly Handling Firearms in a Motor Vehicle in violation of R.C. §2923.16(C). The trial court ordered each cases sentence to run consecutively for an aggregate prison term of twenty-three months.

{¶6} The appellant timely filed a notice of appeal and raised the following two assignments of error:

{¶7} "I. THE PROPORTIONALITY OF THE SENTENCE WAS INCONSISTENT WITH THE PRINCIPLES SET FORTH O.R.C. §2929.11 AND FACTORS TO BE CONSIDRED (sic) IN O.R.C. §2929.12."

{¶8} "II. SHOULD THIS HONORABLE COURT SHOULD [sic] SHOULD VACATE THE TRIAL COURT'S DECISION TO IMPOSE CONSECUTIVE SENTENCES

ON COUNTS 2-3 AND 5 BECAUSE THE CONSECUTIVE SENTENCES ARE IN CONTRAVENTION OF THE SENTENCING STATUTES."

STANDARD OF REVIEW

{¶9} A court reviewing a criminal sentence is required by R.C. §2953.08(F) to review the entire trial court record, including any oral or written statements and presentence investigation reports. R.C. §2953.08(G)(2) provides we may either increase, reduce, modify, or vacate a sentence and remand for resentencing where we clearly and convincingly find that either the record does not support the sentencing court's findings under R.C. §2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law. See, also, *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.2d 659, ¶28.

{¶10} "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶11} A sentence is not clearly and convincingly contrary to law where the trial court "considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes post release control, and sentences the defendant within the permissible statutory ranges." *State v. Morris*, 5th Dist. Ashland No. 20-COA-015, 2021-Ohio-2646, ¶90 quoting *State v. Dinka*, 12th Dist. Warren Nos. CA2019-03-022 and CA2019-03-026, 2019-Ohio-4209, ¶36.

{¶12} The trial court must consider the purposes and factors contained in R.C. §2929.11 and §2929.12, but this Court has held that when the transcript of "the sentencing hearing is silent as to whether the trial court considered the factors in R.C. 2929.11 and 2929.12" a presumption arises "that a trial court considered the factors contained in R.C. 2929.12." *State v. Hannah*, 5th Dist. Richland No. 15-CA-1, 2015-Ohio-4438, ¶13. *Accord State v. Tenney*, 11th Dist. Ashtabula No. 2009-A-0015, 2010-Ohio-6248, ¶14 and *State v. Crawford*, 5th Dist. Muskingum No. CT2021-0059, 2022-Ohio-3125, ¶18.

ANALYSIS

I.

{¶13} In the first Assignment of Error, the appellant argues the proportionality of the sentence was inconsistent with the principles set forth in R.C. §2929.11 and factors to be considered in R.C. §2929.12. We disagree.

{¶14} This court may modify the appellant's sentence only if it "clearly and convincingly finds that either the record does not support the sentencing court's findings under R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law." The appellant does not argue that R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I) apply, so we are restricted to consideration of whether the sentence is otherwise contrary to law.

{¶15} The sentence imposed by the trial court for each charge is within the statutory guidelines and the appellant does not assert a position to the contrary. Instead, he argues the minimum sanctions to achieve the purpose of R.C. §2929.11 was in contrast to the sentence received and that the trial court failed to consider R.C. §2929.12.

The Supreme Court of Ohio has made clear that R.C. §2953.08(G)(2) does not permit "an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12." *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649. For that reason, our authority to modify the sentence would arise only if the appellant demonstrates by clear and convincing evidence that the sentence is "otherwise contrary to law."

{¶16} Locke relies on the Supreme Court of Ohio's decision in *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, 888 N.E.2d 1073 in which the defendant was subject to an aggregate sentence of 134 years and complained that the sentence "is shocking to a reasonable person and to the community's sense of justice and thus is grossly disproportionate to the totality of his crimes." *Id*. at ¶15. The Court found that "[b]ecause the individual sentences imposed by the court are within the range of penalties authorized by the legislature, they are not grossly disproportionate or shocking to a reasonable person or to the community's sense of justice * * *." *Id*. at ¶23.

{¶17} We reach the same conclusion in the case before us as each of the appellant's terms was within the statutory range and thus cannot be found to be grossly disproportionate or shocking to a reasonable person or to the community's sense of justice. We also find that the sentence is not otherwise contrary to law.

{¶18} The appellant also argues that the trial court neglected to consider R.C. §2929.12 during sentencing because the appellant claims he showed genuine remorse and enrolled in a drug abuse treatment program. The appellant does concede that the trial court noted the appellant's lengthy list of convictions and his repeated failure to appear in court.

{¶19} In our review of the language of R.C. §2929.11 and 2929.12, we have held that:

> While trial courts are required to consider both R.C. 2929.11 and R.C. 2929.12 before imposing a prison sentence, they are not required to make specific findings under any of those considerations. *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶31; *State v. Arnett*, 88 Ohio St.3d 208, 724 N.E.2d 793 (2000). "Indeed, consideration of the factors is presumed unless the defendant affirmatively shows otherwise." *State v. Phillips*, 8th Dist. Cuyahoga No. 110148, 2021-Ohio-2772, 2021 WL 3560891, ¶8, citing *State v. Wright*, 2018-Ohio-965, 108 N.E.3d 1109, ¶16 (8th Dist.).

Crawford at ¶ 18.

{¶20} In a separate case, we concluded that "[a]lthough a trial court must consider the factors in R.C. 2929.11 and 2929.12, there is no requirement that the court state its reasons for imposing a maximum sentence, or for imposing a particular sentence within the statutory range. There is no requirement in R.C. 2929.12 that the trial court states on the record that it has considered the statutory criteria concerning seriousness and recidivism or even discussed them. (Citations omitted.) *State v. Webb*, 5th Dist. Muskingum No. CT2018-0069, 2019-Ohio-4195, ¶17.

{¶21} The trial court was not obliged to describe its rationale for the sentence on the record or that it had considered the factors listed in R.C. §2929.12, and the appellant has neither affirmatively shown that the factors were not considered.

{¶22} Accordingly, the appellant's First Assignment of Error is overruled.

II.

{¶23} In the second Assignment of Error, the appellant argues that the trial court sentenced the appellant to consecutive sentences in contravention of the sentencing statutes. We disagree.

ANALYSIS

{¶24} R.C. §2929.14(C)(4) authorizes the trial court to impose consecutive sentences but only if the court makes specific findings regarding the offender's conduct, the need to punish the offender, or the need to protect the public. "In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. §2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. "[A] word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *Id*. at ¶29.

{¶25} The appellant summarily argues that if this Court finds the trial court's findings insufficient to impose consecutive sentences, then the matter should be remanded. We have reviewed the sentencing transcript and the sentencing entry and find the trial court made the necessary findings to impose consecutive sentences.

{¶26} The appellant's Second Assignment of Error is overruled.

CONCLUSION

{¶27} For the forgoing reasons, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is hereby affirmed.

By: Baldwin, J.

Delaney, P.J. and

Gwin, J. concur.